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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF COMPETITION IN THE )  
PROVISION OF ELECTRIC SERVICES )  
THROUGHOUT THE STATE OF ARIZONA )DOCKET NO.  
RE-00000C-94-0165**ARIZONA COMMUNITY ACTION ASSOCIATION'S  
REPLY COMMENTS ON THE MAY 14, 1999 FILINGS**

Arizona Community Action Association (ACAA) hereby files reply comments on the May 14<sup>th</sup> filings on the proposed Electric Competition Rules. ACAA has organized this filing into two sections, the first being Reply Comments and the second being a restatement of our concerns with the proposed Rule.

**A. ACAA REPLY COMMENTS**

1. ACAA is heartened that a potential Energy Service Provider (ESP), Commonwealth, is interested in serving the residential market, even though their product will likely be premium priced green power. While we take issue with some facets of their comments, **ACAA supports Commonwealth's assertions that:**

- Most small customers are denied choice in the early stages and those customers should be able to share in the low-energy cost advantage that their neighbors and larger business competitors enjoy (P 2, L 24-27).
- Billing formats should compare apples to apples for customer shopping (P 8 L 1-15).
- The CTC should be level for both competitive and non-competitive customers (P 14, L 2-6). (So long as any double-dipping on non-competitive customers is avoided.)

2. **ACAA takes issue with Commonwealth on the following:**

- The ESP is vulnerable without the right to disconnect for non-payment (P 7 at L 6).

ACAA disputes the vulnerability of ESPs. The change to a competitive electric market renders some company protections inappropriate. Under the monopoly system, utilities were **required to serve** customers in their territory and, in exchange, the utilities were granted the right to disconnect customers for non-payment. By moving into the competitive arena, another level of commerce emerges, one of choice and contracts. ESPs are not required to serve all or any customers. ESPs choose their customers with as much, if not more care, than customers choose them. ESPs will execute contracts which will protect the company and establish provisions to end the contract for non-payment, just like other contracts in the free-market world. ESPs will be able to pursue payment just like other agents of commerce. This issue was brought forth by the residential consumer groups and hammered out in detail in the Unbundling Working Group (which consisted of ESPs, utilities, the AG Office, other parties and both small and large consumers), resulting in the consensus position which is in the Rule today. ESPs must accept the pits along with the cherries. It is unfair to allow ESPs to pick and choose among the protections of a regulated market while also reaping the benefits of a competitive market. ACAA opposes allowing ESPs to disconnect for non-payment. They are well enough protected by contract provisions. In sum, the ESP is not discriminated against by this provision in the Rule; ESPs will simply be operating under the double edged sword of a free-market system.

As for Commonwealth's assertion that consumers will game the system to get free electricity, it is unlikely that ESPs will allow that to happen. ESPs will protect themselves financially by charging a deposit, just as affected utilities do today.

- Customers are barred from competition because of deposit requirements (P 3 L21-21).

ACAA disagrees that the Rule needs to be changed. It is a barrier to service which exists today, primarily for low-income customers, and is not unique to the competitive market. The deposit barrier is indicative of the need to establish, expand, and coordinate adequate low-income programs at the utility, state, and federal level. Only one statewide program exists to assist low-income families with deposits, the Utility Repair, Replacement, and Deposit Fund (URRD). The fund can't help everyone; but it does help some low-income families establish or re-establish service. URRD is funded through abandoned utility deposits.

ACAA would certainly like to see more flexible payment plans for deposits. ACAA would suggest that the Rule be changed to specifically

allow ESPs and UDSc to provide flexible payment plans. If doing away with deposits or reducing deposits is contingent upon allowing ESPs to disconnect customers, it is a poor bargain indeed. The bottom line is that the ESP would benefit at the expense of the consumer.

- Standard Offer Tariffs should not be used to deter competition (P 8 L 25-28, P 9 L 10)

Standard Offer Tariffs are designed to allow some benefits of competition to flow to captive customers during the transition through rate reductions. In addition, Standard Offer provides a safe, understandable service for consumers who are uncomfortable switching, slow to switch, or simply don't want to switch. At some point in the future, we should perhaps revisit the issue, after consumers have had some experience with a new way of life.

ACAA has concerns about Commonwealth's suggestion to exclude any discount to a customer if it would jeopardize existing Low-income discount rates, designed to make electric service more affordable. Low-income rates/tariffs must be protected.

- ESPs should have the option of being the Provider of Last Resort.

ACAA has serious concerns because Provider of Last Resort (PLR) is first and foremost a consumer protection for consumers who have entered the competitive market and are at risk of ending up without any provider. The PLR will be the safety net to provide affordable access to electrical service to all small customers. The vast majority of consumers are not likely to be in this category. Without further in depth evaluation by the parties, at this point in time, ACAA believes the PLR should reside with the UDC.

- Residential waiting lists be released to ESPs (P 3, L 9-12).

While we have no quarrel with releasing a list in general, ACAA believes that residential consumers, who do not want their names released, must be protected by excluding them from the released list.

- Allowing third-party verification of oral transactions (P 4, at L 13).

ACAA disagrees. We believe there are opportunities for abuse, which could ultimately harm consumers through slamming. We are especially concerned about the impact on slammed low-income consumers who are participating in a low-income rate. Slamming these customers could have dire financial consequences. For some families, the line between remaining self-sufficient or not rests on just a few dollars. The risk of slamming is too great. Even though a company may have the best of

intentions, recent events in Arizona with a telecom company show how the company's agent slammed customers without the company's knowledge. While it may be possible to negotiate a solution which would adequately protect all consumers, at this time, ACAA opposes third-party verification.

**3. In reply to the APS comments:**

- 14-2-1617 Disclosure of Information (P 8, L 10-18).  
ACAA disagrees. All generation, whether provided under Standard Offer or competitive tariffs, should be subject to disclosure of the resource mix. Consumers both want and need basic information about the resource mix and from the perspective of helping consumers transition to a competitive market, it makes sense to keep them well informed.

**4. ACAA supports the Land and Water Fund comments on:**

- The Rule denies small consumers the opportunity to organize themselves for aggregation and that aggregation activities should be encouraged to the fullest extent possible (P 2, 2<sup>nd</sup> paragraph; P 4).
- Supporting the newly opened docket on the Solar Portfolio (P 2, 3<sup>rd</sup> paragraph; P 5).
- The need for consumer-friendly labeling and disclosure of price, fuel mix, and emissions and the model act document of the Consumer Information Disclosure Project by the Western Conference of Public Service Commissioners (P 2-4).

**5. ACAA supports TEP's comments on:**

- The CTC should be recoverable from all customers, including those under special contract (P 5 L 28- P 6 L 1). (So long as double-dipping is avoided.)
- 14-2-1607 The proposal to delete self-generation from being excluded from stranded cost recovery (P 3, L 23-29).

**6. ACAA disagrees or has concerns with TEP on the following:**

- 14-2-1606 The proposal to utilize a purchased power adjustment mechanism for purchasing Standard Offer power on the Open Market (P 3, L 8-11).  
ACAA has concerns about the risks to standard offer residential customers.
- 14-2-1607 The proposal to exclude from stranded cost mitigation those profits from expanding wholesale or retail markets or offering a wider scope of permitted regulated utility services (P 3, L 12-22). Stranded cost mitigation, in this manner, provides the opportunity for some degree of benefit to residential consumers, who are getting so little.

- 14-2-1618 TEP's position that providing the resource mix could be too burdensome and costly. ACAA believes that a compromise is possible to provide the necessary information in a cost-effective manner.

**7. ACAA supports Staff in the following:**

- 14-2-1612.I 5 Days Notice of Return to Standard Offer Service. ACAA can support Staff's recommended change so long as the consumer will not be left without power and a service provider.

**8. ACAA disagrees with Staff in the following:**

- 14-2-1601 & 1606.C.6 Economic Development Tariffs (EDT) definition (P 2, L 12-20). While there exists the potential for social benefit from the creation of an Economic Development Tariff, there also remains the potential for unintended consequences. ACAA absolutely supports economic development, especially in the rural areas with high poverty rates. However, this is the first ACAA has heard of this proposal. EDTs must be used with discretion so as not to encourage "free riders", those who would have located there without a financial incentive. Any EDT must be held to an extremely high standard, be subject to Commission review, and not increase costs for other customers. Until the impact of this can be ascertained and the necessary consumer protections, along with the potential costs and risks compared to the benefits, ACAA opposes the EDT.

**9. ACAA agrees with New West Energy on the following:**

- 14-2-1604 Competitive Phases. The Rule penalizes small consumers who may not be prepared to aggregate in the early stages of competition, nor does the Rule provide a viable opportunity to serve residential consumers. The effect will be to discourage ESPs from pursuing the residential market. (P8, P9 L 1-2)
- More detail is needed on System Benefit Charges. (P9, L 18-22)
- Suggested changes on meter testing fees. (P16, L 21-24, P9 L18-22)
- 14-2-203 changes to Deposits, so long as it doesn't preclude an ESP or UDC from providing flexible payments. (P8, L 22-25)

**10. ACAA disagrees with New West Energy on the following:**

- Striking the requirement for ESPs to provide consumer education. (P17, L 13-21)
- 14-2-1613 Reporting Requirements. As ACAA mentioned earlier, a reasonable compromise can provide adequate information cost effectively.
- 14-2-1617 Striking Provisions for disclosure of information. (P18, L 18-21) ACAA believes this section has been continually weakened. Disclosure of information is the section that should be strengthened. It is a necessary public education and protection tool and allows consumers to make better informed decisions.

11. ACAA supports City of Tucson on the following:

- 14-2-1606.B. Purchase of Power for Standard Offer Service. Small consumers on the Standard Offer must be protected against major price fluctuations and other uncertainties from spot market purchases. (P2, L 18-26)
- Solar Portfolio Standard (P3, L 1-17)
- 14-2-1613 (I) Return to Standard Offer Service. As ACAA has previously stated, consumers must not be at risk of losing service when returning to the standard offer. (P4, L 13-26)
- 14-2-1617 Disclosure of Information City of Tucson explains very well the benefits to suppliers and the risks to consumers. (P5, L 22-26, P6, L 1-2) ACAA again urges the commission to strengthen this provision by; requiring the resource mix to be provided along with the other information.

#### **B. ACAA CONCERNS ABOUT THE PROPOSED RULE**

The Proposed Rule contains disadvantages for low-income and residential consumers. It provides extremely limited consumer choice and access to lower competitive rates. ESPs should be required to serve residential consumers as a condition of doing business in Arizona. Low-income and residential consumers will have to pay more than their equitable share of stranded costs under the CTC discount plan. More detail is needed on providing impartial consumer education and both affected utilities and ESPs should conform their own education plans and materials to that which will be developed for the ACC. There are a number of unresolved issues which must be addressed either in Rulemaking or in another process.

Specifically, the Proposed Rule disadvantages small consumers by:

1. Denying residential and low-income consumers adequate opportunities to participate in the competitive market, essentially stranding them and making them captive customers.
2. Shifting stranded costs onto captive residential consumers and denying them CTC discounts available only to competitive customers.
3. Creating a competitive market exclusively for large consumers, while excluding small consumers, due to lack of incentives or mandates for ESPs to serve residential consumers.
4. Providing little direction for an impartial education program.

**ACAA urges the Commission to make the following amendments:**

- 1. Create adequate opportunities for residential consumers to participate in the competitive market and create opportunities for a viable pool of residential consumers for ESPs.**

The rules fail to provide a reasonable opportunity for residential consumers to participate in the competitive market. This lack of opportunity not only disadvantages residential consumers, but it also creates a disincentive for competitive suppliers to serve the residential market. As a result, competitive suppliers are virtually ignoring the residential class. With so few residential consumers eligible, the economies of scale are not cost effective. This is an equity issue for residential consumers. ACAA believes strongly that these opportunities must be restored and expanded by the Commission.

**14-2-1604. Competitive Phases**

- B. As part of the minimum 20% of 1995 system peak demand set forth in R14-2-1604(A), each Affected Utility shall reserve a residential phase-in program that provides an increasing minimum percentage of residential customers with access to competitive electric services according to the following schedule:**

<b>1.</b>	<b>January 1, 1999</b>	<b><u>2 ½%</u></b>
	<b>April 1, 1999</b>	<b><u>4 ½%</u></b>
	<b>July 1, 1999</b>	<b><u>7 ½%</u></b>
	<b>October 1, 1999</b>	<b><u>10%</u></b>
	<b>January 1, 2000</b>	<b><u>12 ½%</u></b>
	<b>April 1, 2000</b>	<b><u>15%</u></b>
	<b>July 1, 2000</b>	<b><u>17 ½%</u></b>
	<b>October 1, 2000</b>	<b><u>20%</u></b>

- 2. Avoid shifting costs and inequitable treatment of stranded cost recovery for residential Standard Offer customers.**

Stranded costs are shifted on to residential customers. Option One of the proposed stranded cost recovery is extremely unfair to small consumers who are held captive and restricted from the competitive market. Residential Standard Offer customers will not only be denied competitive participation but will also be penalized as a result. Only customers in the competitive market will enjoy a hefty CTC discount, which will be limited to large consumers. Basically, the

majority of low-income, residential, and small business consumers will be paying more than their fair share of costs while the "big dogs" get more benefits.

#### Proposed Stranded Cost Order, Option 1

Ensure that any CTC discount is also extended to Standard Offer customers and that any CTC discount is applied in a way so as to not disadvantage captive customers.

### 3. Require ESPs to serve residential consumers.

The rules should provide a requirement for ESPs to serve a percentage of the residential market and provide true choice and competition for all consumers. States such as Texas have passed a similar provision. By requiring ESPs to serve residential consumers in exchange for doing business in Arizona, the Commission could create an equitable and robust market. Increasing the number of residential consumers allowed into the competitive market and requiring ESPs to serve them are necessitated by the obvious lack of residential opportunities in the competitive market.

#### 14-2-1603 Certificates of Convenience and Necessity

B.1. A description of the electric services which the applicant intends to offer; INCLUDING A PLAN TO ENROLL AND SERVE AT LEAST 15% OF THE TOTAL RESIDENTIAL CONSUMERS ELIGIBLE ON October 1, 2000;

G.7. FAILS TO PROVIDE A PLAN TO ENROLL AND SERVE RESIDENTIAL CONSUMERS PURSUANT TO R14-2-1603 B.1.

I.8 THE ELECTRIC SERVICE PROVIDER SHALL COMPLY WITH THE PROVISIONS OF R14-2-1603 B.1 ON OR BEFORE SEPTEMBER 1, 1999.  
Renumber to conform.

### 4. Establish an ACC Consumer Education Advisory Committee and require affected utilities AND ESPs to conform education activities to the ACC program.

Impartial consumer education is a basic consumer protection and should be provided to Arizona consumers. It is separate and distinct from advertising or marketing. The Commission has a leadership role to play in this area. ACAA urges the Commission to make education a special priority and coordinate the ACC and the utility education efforts, secure a funding source, and get started



ACC and the utility education efforts, secure a funding source, and get started quickly. A well educated consumer is more likely to participate in the competitive market. The California experience provides an excellent example of what not to do. There was little coordination of messages and targeting customers, lots of advertising masquerading as education, and an obscene amount of money thrown around while most consumers stayed with their incumbent utility since. It must be remembered, however, the objective of education is not to coerce consumers into switching; it is to inform them.

ACAA supports Commissioner West's suggestion that the ACC enter into an IGA with RUCO to administer an ACC funded consumer education program. ACAA suggests that a Consumer Education Advisory Committee be established to provide oversight to the program and coordinate with RUCO. The committee would include representatives of ACC Staff, RUCO, ACAA, Arizona Consumer Council, the affected utilities, ESPs, and other interested parties.

#### 14-2-1614 Administrative Requirements

E. Prior to October 1, 1999, the Director, Utilities Division, shall implement a Consumer Education Program AND FUNDING PLAN as approved by the Commission TO SERVE AS A MODEL AND A STANDARD FOR AFFECTED UTILITIES AND ESPs EDUCATION PROGRAMS. AFFECTED UTILITIES AND ESPs WILL, AT A MINIMUM, CONFORM THEIR CONSUMER EDUCATION PROGRAMS AND MATERIALS TO THE ACC CONSUMER EDUCATION PROGRAM.

#### 5. Address unresolved issues.

ACAA believes that there are unresolved issues in the Proposed Rule which directly affect whether or not residential and low-income consumers will benefit equitably as a result of electric competition. Further, ACAA believes there must be equitable protections for residential and low-income consumers, including those affecting prices as well as policies. The Proposed Rule should be amended to:

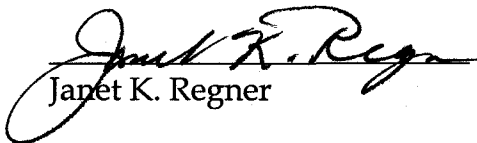
- Ensure that the Standard Offer provides both equitable benefits and protections to residential consumers.
- Add needed details and policies about System Benefit Charges.

- Assure that discounts and other price benefits for consumers in the competitive market are shared equitably with residential customers who are either competitive or stranded.
- Ensure that Provider of Last Resort provisions will adequately protect small consumers and not disadvantage them. Small consumers must have access to affordable electricity.
- Ensure adequate and reasonable policies regarding deposits, payment plans, and extreme weather shut-offs for residential or low-income consumers.
- Ensure that information about the resource mix is readily available to residential consumers without any acquisition barriers, such as having to request it.

**6. Establish Workshops to resolve aggregation and solar portfolio issues.**

- Regarding lack of opportunities for residential and low-income consumers, the latest changes to the Rule limit aggregation opportunities for residential consumers. The Rule should be amended to allow increased aggregation opportunities by residential consumers.
- Reinstate and resolve the Solar Portfolio.

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